

**SENATE, No. 1847**

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**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

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INTRODUCED MARCH 24, 2014

**Sponsored by:**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Clarifies that “upskirting” constitutes invasion of privacy.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning invasion of privacy and amending P.L.2003,  
2 c.206.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 1 of P.L.2003, c. 206 (C.2C:14-9) is amended to  
8 read as follows:

9 1. a. An actor commits a crime of the fourth degree if, knowing  
10 that he is not licensed or privileged to do so, and under  
11 circumstances in which a reasonable person would know that  
12 another may expose intimate parts or may engage in sexual  
13 penetration or sexual contact, he observes another person without  
14 that person's consent and under circumstances in which a reasonable  
15 person would not expect to be observed.

16 b. An actor commits a crime of the third degree if, knowing  
17 that he is not licensed or privileged to do so, he photographs, films,  
18 videotapes, records, or otherwise reproduces in any manner, the  
19 image of another person whose intimate parts are exposed or who is  
20 engaged in an act of sexual penetration or sexual contact, without  
21 that person's consent and under circumstances in which a reasonable  
22 person would not expect to be observed.

23 c. An actor commits a crime of the third degree if, knowing  
24 that he is not licensed or privileged to do so, he discloses any  
25 photograph, film, videotape, recording or any other reproduction of  
26 the image of another person whose intimate parts are exposed or  
27 who is engaged in an act of sexual penetration or sexual contact,  
28 unless that person has consented to such disclosure. For purposes  
29 of this subsection, "disclose" means sell, manufacture, give,  
30 provide, lend, trade, mail, deliver, transfer, publish, distribute,  
31 circulate, disseminate, present, exhibit, advertise or offer.  
32 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a  
33 fine not to exceed \$30,000 may be imposed for a violation of this  
34 subsection.

35 d. It is an affirmative defense to a crime under this section that:

36 (1) the actor posted or otherwise provided prior notice to the  
37 person of the actor's intent to engage in the conduct specified in  
38 subsection a., b., or c., and

39 (2) the actor acted with a lawful purpose.

40 e. (1) It shall not be a violation of subsection a. or b. to  
41 observe another person in the access way, foyer or entrance to a  
42 fitting room or dressing room operated by a retail establishment or  
43 to photograph, film, videotape, record or otherwise reproduce the  
44 image of such person, if the actor conspicuously posts at the  
45 entrance to the fitting room or dressing room prior notice of his

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 intent to make the observations, photographs, films, videotapes,  
2 recordings or other reproductions.

3 (2) It shall be a violation of subsection c. to disclose in any  
4 manner any such photograph, film, videotape or recording of  
5 another person using a fitting room or dressing room except under  
6 the following circumstances:

7 (a) to law enforcement officers in connection with a criminal  
8 prosecution;

9 (b) pursuant to subpoena or court order for use in a legal  
10 proceeding; or

11 (c) to a co-worker, manager or supervisor acting within the  
12 scope of his employment.

13 f. It shall be a violation of subsection a. or b. to observe  
14 another person in a private dressing stall of a fitting room or  
15 dressing room operated by a retail establishment or to photograph,  
16 film, videotape, record or otherwise reproduce the image of another  
17 person in a private dressing stall of a fitting room or dressing room.

18 g. For purposes of this act, a law enforcement officer, or a  
19 corrections officer or guard in a correctional facility or jail, who is  
20 engaged in the official performance of his duties shall be deemed to  
21 be licensed or privileged to make and to disclose observations,  
22 photographs, films, videotapes, recordings or any other  
23 reproductions.

24 h. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
25 provisions of law, a conviction arising under subsection b. of this  
26 section shall not merge with a conviction under subsection c. of this  
27 section, nor shall a conviction under subsection c. merge with a  
28 conviction under subsection b. of this section; a conviction arising  
29 under subsection i. of this section shall not merge with a conviction  
30 under subsection j. of this section, nor shall a conviction under  
31 subsection j. merge with a conviction under subsection i. of this  
32 section.

33 i. An actor commits a crime of the third degree if, knowing  
34 that he is not licensed or privileged to do so, he photographs, films,  
35 videotapes, records, or otherwise reproduces in any manner, the  
36 image of another person's intimate parts under or around the  
37 person's clothing to view or attempt to view the person's intimate  
38 parts without that person's consent and under circumstances in  
39 which a reasonable person would believe that the intimate parts  
40 would not be visible to the public. An actor commits a crime of the  
41 second degree under this subsection if the person is under 18 years  
42 old.

43 j. An actor commits a crime of the third degree if, knowing  
44 that he is not licensed or privileged to do so, he discloses any  
45 photograph, film, videotape, recording or any other reproduction of  
46 the image of another person's intimate parts under or around the  
47 person's clothing to view or attempt to view the person's intimate  
48 parts unless that person has consented to such disclosure. For

1 purposes of this subsection, "disclose" means sell, manufacture,  
2 give, provide, lend, trade, mail, deliver, transfer, publish, distribute,  
3 circulate, disseminate, present, exhibit, advertise or offer.  
4 Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a  
5 fine not to exceed \$30,000 may be imposed for a violation of this  
6 subsection. An actor commits a crime of the second degree under  
7 this subsection if the person is under 18 years old.

8 k. For the purposes of subsections i. and j. of this section,  
9 "intimate parts" shall mean the following body parts, whether  
10 clothed or unclothed: sexual organs, genital area, anal area, inner  
11 thigh, groin, buttock, or breast of a person.

12 (cf: P.L.2003, c.206, s.1)

13  
14 2. Section 2 of P.L.2003, c.206 (C.2A:58D-1) is amended to  
15 read as follows:

16 2. a. (1) An actor who, without license or privilege to do so,  
17 photographs, films, videotapes, records, or otherwise reproduces in  
18 any manner, the image of another person whose intimate parts are  
19 exposed or who is engaged in an act of sexual penetration or sexual  
20 contact, without that person's consent and under circumstances in  
21 which a reasonable person would not expect to be observed, shall be  
22 liable to that person, who may bring a civil action in the Superior  
23 Court.

24 (2) An actor who, without license or privilege to do so,  
25 photographs, films, videotapes, records, or otherwise reproduces in  
26 any manner, the image of another person's intimate parts under or  
27 around the person's clothing to view or attempt to view the person's  
28 intimate parts, without that person's consent and under  
29 circumstances in which a reasonable person would believe that the  
30 intimate parts would not be visible to the public, shall be liable to  
31 that person, who may bring a civil action in the Superior Court.

32 b. (1) An actor who, without license or privilege to do so,  
33 discloses any photograph, film, videotape, recording or any other  
34 reproduction of the image of another person whose intimate parts  
35 are exposed or who is engaged in an act of sexual penetration or  
36 sexual contact, without that person's consent and under  
37 circumstances in which a reasonable person would not expect to be  
38 observed, shall be liable to that person, who may bring a civil action  
39 in the Superior Court.

40 (2) An actor who, without license or privilege to do so, discloses  
41 any photograph, film, videotape, recording or any other  
42 reproduction of the image of another person's intimate parts under  
43 or around the person's clothing to view or attempt to view the  
44 person's intimate parts, without that person's consent and under  
45 circumstances in which a reasonable person would believe that the  
46 intimate parts would not be visible to the public, shall be liable to  
47 that person, who may bring a civil action in the Superior Court.

1       (3) For purposes of this section, "disclose" means sell,  
2 manufacture, give, provide, lend, trade, mail, deliver, transfer,  
3 publish, distribute, circulate, disseminate, present, exhibit, advertise  
4 or offer.

5       c. The court may award:

6       (1) actual damages, but not less than liquidated damages  
7 computed at the rate of \$1,000.00 for each violation of this act;

8       (2) punitive damages upon proof of willful or reckless disregard  
9 of the law;

10       (3) reasonable attorney's fees and other litigation costs  
11 reasonably incurred; and

12       (4) such other preliminary and equitable relief as the court  
13 determines to be appropriate.

14       d. For the purposes of paragraph (2) of subsection a. and  
15 paragraph (2) of subsection b. of this section, "intimate parts" shall  
16 mean the following body parts, whether clothed or unclothed:  
17 sexual organs, genital area, anal area, inner thigh, groin, buttock, or  
18 breast of a person.

19 (cf: P.L.2003, c.206, s.2)

20  
21       3. This act shall take effect immediately.

## 22 23 24 STATEMENT

25  
26       This bill clarifies that it is a crime under this State's invasion of  
27 privacy law to secretly photograph underneath a person's clothing.  
28 Referred to as "upskirting," this practice occurs when perpetrators  
29 use their cell phones to take pictures and record video under the  
30 skirts and dresses of unsuspecting victims who frequently are  
31 travelling on public transportation, such as trains or buses.

32       Under this bill, it is a crime of the third degree to photograph,  
33 film, videotape, or record the image of another person's intimate  
34 parts under or around the person's clothing to view or attempt to  
35 view the person's intimate parts without that person's consent and  
36 under circumstances in which a reasonable person would believe  
37 that these intimate parts would not be visible to the public. It also  
38 is a crime of the third degree under the bill to disclose such a  
39 photograph, film, videotape, or recording. Third-degree crimes are  
40 punishable by a term of imprisonment of three-to-five years, a fine  
41 of up to \$15,000, or both.

42       The bill also upgrades the crime of upskirting to a second-degree  
43 crime if it is committed against a person under 18 years of age.  
44 Second-degree crimes are punishable by a term of imprisonment of  
45 five-to-10 years, a fine of up to \$150,000, or both.

46       Finally, the bill clarifies that there is a civil cause of action for  
47 invading one's privacy by recording or disclosing images of another  
48 person's intimate parts under or around the person's clothing to

1 view or attempt to view the person's intimate parts obtained in  
2 violation of the bill's provisions. The court may award actual  
3 damages, punitive damages and reasonable attorney's fees.

4 In response to a court decision ruling that upskirting was not illegal,  
5 a state law was recently enacted in Massachusetts criminalizing the  
6 practice. It is the sponsor's intent to similarly protect women in this  
7 State from the vile and degrading practice of upskirting by making it  
8 clear that it constitutes an invasion of privacy under criminal and civil  
9 law.